

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

PERSONAL AUDIO, LLC,)
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)
)
Plaintiff,)
)
)
) Civil Action No. 2:13-cv-00013-JRG-RSP
v.) Jury Trial Demanded
TOGI ENTERTAINMENT, INC.,) LEAD CASE
)
)
Defendant.)
)
)

JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Pursuant to P.R. 4-3, Plaintiff Personal Audio, LLC and Defendants CBS Corporation, NBCUniversal Media, LLC, Togi Entertainment, Inc., Howstuffworks.com, FOX Broadcasting Company, FOX Networks Group, Inc., Lotzi Digital, Inc., and a Partnership consisting of Adam Carolla, Donny Misraje, Kathee Schneider-Misraje, Sandy Ganz and DOES 1-10, inclusive, d/b/a “ACE Broadcasting” and/or “Carolla Digital” (collectively referred to as “Defendants”) file this Joint Claim Construction and Prehearing Statement.

I. Agreed Claim Constructions [P.R. 4-3(a)]

Pursuant to P.R. 4-3 (a), the parties have agreed on proposed constructions of the following claim terms, phrases, or clauses, of the patent-in-suit, U.S. Patent 8,112,504 (“the ‘504 Patent”):

U.S. Patent 8,112,504

Term	Agreed Construction
“disseminating a series of episodes . . . as said episodes become available”	distributing a group or connected succession of episodes . . . as new episodes become available
“responding to each given one of said requests”	responding to each given one of the requests received from remotely located client devices
“data file”	computer file containing data
“a predetermined URL”	a URL determined in advance

If the parties are able to reach further agreement concerning the constructions of any of the remaining claim terms, phrases, or clauses at issue, they will supplement the present Joint Claim Construction and Prehearing Statement.

II. Disputed Claim Construction [P.R. 4-3(b)]

Pursuant to P.R. 4-3(b), the parties’ proposed constructions of disputed claim terms, phrases, or clauses are also reflected in the table attached as Exhibit A, together with all references from the specification or prosecution history that support the construction and an identification of any extrinsic evidence. The parties expressly reserve the right to rely on any intrinsic and extrinsic evidence identified by the other party, and any evidence obtained, or that may be obtained, through claim construction discovery. The parties expressly reserve the right to amend, correct, or supplement its claim construction positions and supporting evidence in response to any change of position by the other party, in response to information received

through claim construction discovery, including inventor depositions and expert depositions concerning claim construction declarations, or for other good cause.

III. Length of Claim Construction Hearing [P.R. 4-3(c)]

The parties anticipate that the claim construction hearing will require a total of four hours. Of this time, one hour will be allotted to tutorial presentations, and three hours will be allotted to oral argument. This would allow each party two hours to argue the disputed terms, phrases, and clauses.

IV. Live Witness Testimony at Claim Construction Hearing [P.R. 4-3(d)]

Plaintiff does not intend to call any witnesses live at the claim construction hearing. Defendants intend to call their expert witness, Dr. Adam A. Porter, either live at the claim construction hearing or by declaration and/or deposition testimony. The parties will supplement this Statement in advance of the claim construction hearing as to whether Dr. Porter will appear live. Dr. Porter's testimony is summarized in his Declaration of December 12, 2013.

V. Other Issues [P.R. 4-3(e)]

According to the Scheduling and Discovery Order, there is no prehearing conference scheduled before the claim construction hearing. The parties do not at this time have any other issues that might be appropriately taken up at either a prehearing conference before or at the claim construction hearing. Should any party become aware of such issues that it believes necessitates a prehearing conference, it will notify the other party and the Court and propose dates for a prehearing conference.

DATED: February 28, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this the 28th day of February, 2014. Any other counsel of record will be served by first class U.S. mail on this same date.

/s/ Papool S. Chaudhari